

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2039 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHARAD C. BRAHMBHATT

Versus

GUJARAT STATE HANDLOOM DEVELOPMENT CORPORATION LTD

Appearance:

MR MUKESH PRAJAPATI for Petitioner
MR CHETAN PANDYA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/09/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner who was given the appointment as Driver in the respondent-Corporation filed this special civil application and prayed for issuance of a writ of mandamus or any other appropriate writ, order or direction declaring the action of the respondent-Corporation and more particularly the Chairman

himself in obtaining signature from the petitioner under threats and influence, and thereafter treating the same, as resignation of the petitioner and thereby terminating his services as Driver in the respondent-Corporation as illegal, arbitrary, malafide and violative of Articles 14, 16 and 311 of the Constitution of India and for further declaration that the said document dated, the petitioner has left blank in the prayer clause, purporting to be resignation of the petitioner as null and void and for further declaration of the petitioner's services as continuing one till today and to give all benefits on account of continuing services and arrears of salary etc..

3. The petitioner has produced on record of this special civil application the order of the respondent-Corporation at page no.27 under which his resignation submitted by him dated 9-11-1983 was accepted with effect from 1-12-1983 and he was ordered to be relieved with immediate effect. The case of the petitioner is that it was not his voluntary resignation but the Chairman has taken the resignation from him under threat and influence. In para-8 of the petition, the petitioner has stated that on, the date has not been mentioned, he went to the office of the respondent-Corporation to ask for the necessary papers which were required for giving proper explanation to the chargesheet. The concerned Manager asked the petitioner to see the Managing Director. On approaching the Managing Director, the Manager under threat of initiating criminal prosecution and other threats of arresting the petitioner got the petitioner's signature on the paper and asked the petitioner to forget about his services as Driver with the Corporation and also stated in clear terms that if the petitioner will give any application against the Managing Director regarding his personal use of car after office hours and use of the car for learning his son driving of car etc. the petitioner will be sent to jail and will lose bread from all sides. The petitioner has stated that thereafter through the union, the petitioner tried to inquire into the matter as to the hearing of the chargesheet but on date, again he left nil, the petitioner came to know through the union that the letter which was signed by the petitioner under duress of the Managing Director itself was in fact used as a resignation though the petitioner has not given any resignation. From the averments which have been made, it is nowhere the case of the petitioner that the Chairman of the Corporation has taken any of his signature on the paper and that paper has been prepared as resignation. If we minutely go through the contents of para-8 of the

special civil application, then also it is difficult to spell out that the Managing Director has taken the signature of the petitioner. The petitioner's averment is only that the Manager under threat of initiating criminal prosecution and other threats of arresting the petitioner, got the petitioner's signature on the paper. The petitioner has not disclosed the material dates. That also creates the doubt in the mind of the Court regarding the truth in the case of the petitioner. Above that, the petitioner has not impleaded the Chairman or the Managing Director as a party to this special civil application. He raised serious allegations against the Chairman and the Managing Director and those were the very necessary parties. This special civil application has been filed by the petitioner before this Court on 22-7-1985 and the alleged resignation has been prepared on 9-11-1983. Immediately on signing of the papers, the petitioner has not raised any protest or he has not made any complaint. Even if it would have been really a case of threat to the petitioner to the extent of falsely implicating him in some criminal case, he should have raised a voice and he should have complaint this matter to the Police Department. When he has reported the matter to the Union is also not known as that date has been left blank. From the document annexure 'G', it comes out that the petitioner approached to the Union some time in the month of November, 1984 that is after more than one year of the submission of his resignation.

4. This writ petition has been filed by the petitioner under Article 226 of the Constitution and in this petition he has raised a serious disputed question of facts. This writ petition otherwise deserves to be dismissed only on the ground that on such disputed question of facts, this Court cannot entertain the petition. However, otherwise also, this plea of the petitioner is nothing but only a concocted plea. The petitioner in connection with the misconduct was served with a chargesheet dated 30th September, 1983 and on the same date under the order dated 30th September, 1983 he was placed under suspension. The resignation of the petitioner was accepted from 1st December, 1983 under the order dated 9-11-1983, and as such, the petitioner was not remained under suspension. It is different matter that the petitioner may say anything that he has come to know of his resignation at very late stage but it is not the case of the petitioner that for all the time i.e. after 1-12-1983 he was paid subsistence allowance by the respondents. When subsistence allowance was not paid to the petitioner then certainly that was the point of time when he would have known about all these things. This in

all the eventualities would have been in the month of December, 1983 or January, 1984. This very fact goes to the root of the matter which makes the case of the petitioner as pleaded unbelievable.

5. Taking into consideration the totality of the facts of this case, this writ petition is wholly misconceived and the same is dismissed with costs of Rs.1000/-. Rule is discharged.

zgs/-